IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.2657 of 1993

Date of Order : 21/11/2007

Radhey Shyam alias Shyam Lal & ors. Vs. Radhey Sham and anr.

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Shri Sudhir Mittal, Advocate for the petitioner.

Shri V.K.Jain, Senior Advocate with
Shri Prashant Vashisht, Advocate for the respondent.

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J U D G M E N T

HEMANT GUPTA, J. (Oral)

The landlord-petitioners are in revision aggrieved against the order passed by the learned Appellate Authority whereby the eviction sought by the petitioners for the reason that the tenants have materially impaired the value and utility of the building, was declined and consequently, the eviction petition was dismissed.

The shop in dispute was rented out to the respondents by Mool Chand, predecessor-in-interest of the petitioners vide Rent Note dated 8.11.1968 @ Rs.60/- per month. It is the case of the petitioners that two doors shown as C & E in the site plan, have been closed by the respondents and by such an act of the respondents, the uninterrupted flow of light and air has been affected. It is also alleged that there was a pillar in the Verandah in front of the shop, which has been removed by the respondent-tenants. It is further alleged that the respondent-tenants have also removed a door which opened in the Verandah and have installed a shutter in the Verandah and

thus, made the Verandah part and parcel of the shop in dispute. Such alterations were made by the respondent-tenants without any permission from the petitioner-landlords and thus, it was alleged that the respondents are liable to be evicted having made additions and alterations in the demised premises which have materially impaired the value and utility of the building.

In reply, the tenant denied the effecting of any alteration and it was stated that all the alterations were made at the time of giving the property on rent to him and after he took the property on rent, he has not made any alteration in the same and the shop is in the same condition as it was at the time of inception of tenancy.

In support of his claim, the landlord Jai Narain appeared as his own witness as PW-2 and also examined PW-3 Arjun Singh, who has proved the site plan Exhibit PW-3/A. PW-4 Khem Chand and PW-5 Ram Chander are the witnesses who have been examined to prove that there was a pillar in existence and the same has been removed and a shutter has been installed by making the verandah part and parcel of the shop in dispute. On the other hand, the tenant Radhey Shyam appeared as his own witness as RW-2 and produced other witnesses in support of his plea that the shop is in the same condition as it was let out to him.

The learned Rent Controller passed an order of eviction holding that the alteration has been effected by the tenant and such alteration has materially impaired the value and utility of the building. The learned Rent Controller held that the doors on the northern and eastern side of the shop were closed when the shop was let out to the tenant as on such side is the property of landlord or his son.

The learned Appellate Authority found that the rent note Exhibit AW-3/A does not depict the exact description of the shop as the landlord has admitted that two doors in the northern-eastern side of the shop are lying closed, whereas, in the rent note, in the description of boundary, doors have been mentioned therein. Still further, the Court found that stand of the landlord Jai Narain, who appeared as PW-2, that the tenant took one month in effecting such alteration, is not believable as it is the case of the landlord that he is residing in the same three storeyed building. The Court found that the statement of PW-4 Khem Chand and PW-5 Ram Chander is contradictory and that in any case such alteration is not of permanent nature and because just by removing the shutter and fixing a door in the wall in between the Verandah and the interior shop, the shop can be brought into its original shape without much expenses.

Learned counsel for the petitioners has vehemently argued that the tenants have removed the door shown on the western side in the site plan Exhibit PW-3/A and that not only the tenant removed the door, but also the wall in which the said door was affixed. Even the pillar has been removed. After removing the door and some portion of the wall and the pillar, the tenant has made Verandah as part of the shop.

A perusal of the site plan PW-3/A shows the size of Verandah as 7 ft. x 8 ft. Adjoining the Verandah, the site plan shows the shop of Governdhan Dass. Meaning thereby that the building line of the shop is inclusive of Verandah area. In a Verandah of 8 ft. wide, the pillar in the middle of the Verandah cannot be said to be a load bearing nor there is any evidence to that effect. It could not be pointed out that there is any construction on such portion of the Verandah on the first floor. Therefore, a

span of 8 ft. area would not require a pillar for supporting the roof of such Verandah when there are walls on both the sides of such Verandah. Apart from the oral evidence of the witnesses produced by the landlord, there is no expert evidence to prove that there was pillar or the wall was in existence which is alleged to have been removed.

The Hon'ble Supreme Court of India in ***"Waryam Singh Versus Baldev Singh, 2003 (1) S.C.C.-59",*** has held that the Division Bench Judgment of this Court in case "*Narain Singh versus Bakson Laboratories, AIR-1982 Punjab & Haryana-55* does not lay down the correct proposition of law. In the said case, the tenant had enclosed the verandah on the front and back side of the building and opened a door by breaking the wall of the room and thus diminished the value of the premises. After considering the earlier judgments, the Hon'ble Supreme Court held to the following effect:-

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> 16. However, the question still arises whether merely because a verandah is enclosed it can be inferred, without any further evidence or proof, that the value and utility is affected. On the question of material impairment of value or utility, the appellant has lead no evidence at all. The submission has been that no evidence was required to be lead as it has to be inferred that the value or utility had been diminished. We are unable to accept such a submission. In the case of a shop, particularly in business locality, the area of the shop gets increased by the verandah getting enclosed. This would increase the value and utility of the shop. In this case, there is no proof, like in *Vipin Kumar's case* (supra), that free flow of light and air has been

> stopped. On the contrary, by putting up a rolling shutter in the front the flow of light and air is increased. In the absence of any proof of material impairment in value or utility, the High Court was right in concluding that no decree for eviction could be passed. We, therefore, see no reason to interfere with the judgment of the High Court."

Learned counsel for the petitioners has referred to ***"British Motor Car Co. Versus Madan Lal Saggi (dead) and another, 2005 (1) SCC-8",*** to contend that construction of the sheds amounts to an act of material impairment in value and utility of the building. In the said case, the finding was recorded that the construction raised was of permanent nature which could not be removed without doing damage to the building in question as the same was embedded in the floor and also in the side wall. It was also found that the construction of three sheds on almost the whole of the courtyard, was amounting to materially impairing the value of the premises. The said judgment is keeping in view the nature of the construction raised by the tenant. Whereas, in the present case, not only the construction on the part of the tenant is not proved, but such construction does not disclose any materially impairment in the value and utility of the building.

Consequently, I do not find any illegality or irregularity in the findings recorded by the learned Appellate Authority which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition stands dismissed with no order as to costs.

(HEMANT GUPTA)
JUDGE

21/11/2007

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